

**October 26, 2006 Minutes of
Bigfork Land Use Advisory Committee**

Members present: John Bourquin, Phil Hanson, Paul Guerrant, Darrel Coverdell, Shelley Gonzales, Clarice Ryan, Mary Jo Naïve.

Meeting was called to order at 4:04 PM

Agenda was approved unanimously.

Minutes for the October 5, 2006 Special Meeting was approved as mailed.

APPLICATIONS:

Item 1: A request by Jerry Norskog for a Zoning Variance to property within the Bigfork R-4 (Two-Family Limited Residential) Zoning District. The applicant is requesting a variance to Section 3.12.040 3(A) of the Flathead County Zoning Regulations, which require a five (5) foot setback from each side yard. The applicant has an existing structure, which encroaches approximately eight (8) inches into the required setback. The property is located at 239 Beach Road.

Staff: George Smith presented a diagram of the structure. He noted the contractor did not take into account the design of the structure when constructing the foundation. Distance for the setback is measured from the foundation and sheer wall surface. The error was found after the completion of construction. Staff concludes it would be undue hardship to the owner to tear down this area of the structure in order to comply with setback requirements. Although the contractor created the problem, the 8-inch airspace will not adversely affect the adjoining property. The area has many instances of variances due to the older structures and history of the area. Smith recommends approval with the two conditions included in the staff report.

Phil Hanson: How many violations of this kind in the area? Answer: Probably 80%.

Applicant: Ron Incononado, contractor on the structure stated he had constructed the foundation prior to winter while the structure was still in the design stage. The design changed the overhang depth. Incononado tried to be very careful with all requirements. His measurements were 6 inches beyond the setback. He did not believe the water problem the Medlands were experiencing were caused by the Norskog building.

Darrel Coverdell: What would be the cost to fix the overhang? Answer: Very expensive. Contractor would have to replace the fascia all around the house.

Public Comment:

Leslie Budewitz: Is the legal representative for Bob and Susan Medland. The Medlands oppose the application for variance and are concerned about enforcement of zoning regulations. They believe there are three violations including the eve overhang, rock facade and the foundation. Budewitz noted that in the summer of 2005, the Medlands had conversations with the contractor regarding the violation. They subsequently contacted Flathead County and were told it was a civil matter. Budewitz stated she did not think BLUAC would have approved the variance had it been presented prior to construction. Council presented copies of a photograph of the property in question. She concedes the boathouse does encroach upon the adjoining property. The owner claims a prescriptive easement because the structure was built before 1978, before subdivision regulations and setback requirements. Norskog had ample opportunity to go through the process prior to constructing the building. Budewitz asked for a condition that Norskog solve the drainage problem on the Medland property, caused by his structure. Budewitz provided a letter from Broker, Tom Brown, regarding the problems with encroachments and easements. The letter stated both issues complicate and, quite often, destroy a person's ability to sell their property.

BLUAC comment:

Shelley Gonzales: How did the new survey move the property line? Answer: Current surveys are more accurate.

John Bourquin: How long have Medlands owned their property? Answer: Three years.

Clarice Ryan: Why was the foundation constructed before the design completed? Answer: Can't remember exactly, a lot of changes happen during the construction process.

Paul Guerrant: Why would you build so close to the setback? Answer: I thought I had six inches to spare.

George Smith (staff): Granting a variance solves the violation. We do that on a regular basis. It is standard practice.

John Bourquin: Have you (Incoronado) had to come before BLUAC previously for variances? Answer: Yes.

Phil Hanson: Sounds like a neighborhood squabble. I don't think we need to be brought into it. There are many violations on Beach Road.

John Bourquin: How will this affect the owner if the variance is denied? Answer: Contractor will bear the expense of fixing the problem.

Mary Jo Naïve: How much does the variance process cost Flathead County? Answer: The fee probably pays for the costs to the county unless there are violations filed.

Mary Jo Naïve: If someone makes a mistake in construction or design, why should the County pay for that mistake?

Shelley Gonzales: It sounds like litigation is going forward, no matter what we do.

Clarice Ryan: I think the purpose of codes and regulations is to establish the right things for both parties and protects property rights. I think if the roof had to be changed it would be foolish for the sake of regulations.

Paul Guerrant: Norskog is still in violation. Medlands have rights, too. I don't think adding another problem to this area is going to help.

Shelley Gonzales: We have codes for good reasons. I don't view granting a variance after the fact is a precedent I want to encourage.

Mary Jo Naïve: If the only option is to grant a variance or replace the roof, I think there should be another option.

John Bourquin: Incorporonado has been a builder for a long time and knows the regulations. I don't want to set a precedent.

Phil Hanson: Moved to table the application and encourage the parties to work it out. Staff informed the committee that they couldn't do that. Hanson withdrew the motion.

Shelley Gonzales: Moved to deny the application. Paul Guerrant seconded the motion. Motion passed with one dissent, Clarice Ryan.

The Flathead County Board of Adjustment will hear the application on November 8, 2006, 6:00 PM at the Planning Office at 1035 First Avenue West, Kalispell.

Item 2: A request by Eric Johnson for a Zoning Variance to property within the Bigfork AG-40 (Agricultural, 40 acres) Zoning District. The applicant is requesting a variance to Section 3.050.040, Bulk Dimensional Requirements, of the Flathead County Zoning Regulations, which requires one (1) home per forty (40) acres. The applicant requests to split the existing 48.66 acre parcel into two (2) parcels. The property is located at 585 Ramsfield Road.

Staff: Rebecca Shaw reported the natural features of the property, which the applicant has no control over, cause the hardship. Swims Creek divides the property and is within the 100-year flood plain. The neighbor

wishes to purchase the property to use as a wildlife preserve. She noted receiving one letter from a neighbor who was concerned about development of the area. Staff recommends approval of the application.

Applicant: Lisa Horowitz, a Land Use Planner, spoke for the applicant. She reported there was a Family Trust created in 2004 to divide the property for family. The family did not anticipate access issues when they set up the trust. The area is unique due to physical characteristics of the land.

BLUAC Questions:

Paul Guerrant: There is a potential building site. Would a road need to be built for access? Answer: Yes. There are culverts for drainage now. More would need to be built.

Public Comment:

Dan Marcus: Supports the variance. He is considering buying the property.

Phil Hanson: Have you considered a Conservation Easement to protect the property as a wildlife preserve? Answer: It is an attractive way to deal with the concept. It is not my property yet.

Elna Darrow: That part of Swims Creek is a backwater. The water flows through the property from our adjacent property.

BLUAC:

Darrel Coverdell: Did the people who wrote the letter live north of the property? Answer: Yes.

Paul Guerrant: Move to approve the application. Phil Hanson seconded the motion.

Mary Jo Naïve: If Marcus were entertaining the idea of a Conservation Easement, it would make me more comfortable.

Jeff Harris: (Planning Director) There can be no residential property in the area because of septic system requirements. Buildings not using septic systems may be built.

Motion was called and passed unanimously.

The Flathead County Board of Adjustment will hear the application on November 8, 2006, 6:00 PM at the Planning Office at 1035 First Avenue West, Kalispell.

OLD BUSINESS:

Secretary Hanson reported on the two applications from the last regular meeting. The Planning Board approved the Averill project with the exception of the narrower interior roads. She asked Rebecca Shaw to report on Rocky Mountain Recreational Communities Phase 6. Rebecca reported the Staff Report recommended denial on the application. The Applicant was willing to aggregate to one building lot, however, the Planning Board postponed consideration until November 15, 2006.

Bylaws:

The committee discussed a change on Page 4, APPLICATIONS, of second word, first paragraph. Clarice Ryan moved the word "shall" be changed to "should". Shelley Gonzales seconded the motion. Motion passed unanimously. The Amended Bylaws will be corrected and available at the November 30, 2006, meeting for signature approval. Clarice Ryan asked that the signature page be separate from the body of the Bylaws.

NEW BUSINESS:

Richard Jochim approached the Committee regarding the Ponderosa Boat Club. He asserted the neighbors were concerned about planned boat storage and questioned allowing such storage in the zoned area. John Bourquin told Jochim the PUD for the subdivision was conditioned on fencing the boat storage area. Chairman Bourquin asked Jochim to bring a presentation of his documentation and concerns to the next regular BLUAC meeting.

Meeting was adjourned at 5:50 PM.

DRAFT NEIGHBORHOOD PLAN WORKSHOP

Meeting was called to order at 6:00 PM.

Secretary Hanson provided the members with a transmittal from the Bigfork Steering Committee as follows:

"The Bigfork Steering Committee has been working for about 2 years to update the 1993 Bigfork Neighborhood Plan to fit with the Flathead County Growth Plan. Having surveyed the Bigfork community and compiled the information required by state law, the Bigfork Steering Committee does hereby transmit to the Bigfork LUAC this draft neighborhood plan update for their consideration and joint presentation to the community for comments.

The Bigfork Steering Committee hopes that the forthcoming community meetings will refine the plan to satisfy the needs of the area for the next several years.

*Respectfully Submitted,
Elna Darrow, Chair
Bigfork Steering Committee"*

Discussion was held regarding the documentation of public comment. A sample of the format used by the Planning Office with two columns was given to Committee members. Due to the formatting and length of some comments, this format may not be appropriate. The Committee generally agreed that comments should be separated by section relevant to the Draft, with an additional section for General Comments.

Secretary Hanson reported the Bigfork Eagle has requested bi-monthly reports of comments.

Bill Myers suggested the public provide written comments and reference the comments to each section of the Draft.

It was also generally agreed that BLUAC invite those people responsible for each section of the Draft to attend the meeting where that section will be discussed. The Committee agreed on a Workshop schedule to study the draft as follows:

Thursday, November 2, 2006, 4:00 PM Bethany Lutheran Church
Clarify amending, language and coordination.

Wednesday, November 8, 2006, 4:00 PM Bigfork Chamber of Commerce
Section 2-3-4

Tuesday, November 14, 2006, 4:00 PM Bethany Lutheran Church
Section 5

Tuesday, November 21, 2006, 10:00 AM Bethany Lutheran Church
Section 6-7-8

Public Comment:

Bill Myers: I did get a copy of the draft plan. Did not think the Survey represented the age of the community. Think more comment is good and encourage you to welcome comment.

Meeting was adjourned at 7:15 PM

Sue Hanson
Secretary